

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a civil detainee at the Missouri Sexual Offender Treatment Center, brings this action under 42 U.S.C. § 1983. Named as defendant is Alan Blake, CEO of MSOTC. The complaint seeks monetary and injunctive relief.

Plaintiff alleges that he is being denied access to any educational programs that would allow him to obtain an Adult Basic Education or G.E.D. certificate.

The allegations of the complaint do not state a prima facie case under § 1983 because plaintiff does not have a constitutional right to an education. E.g., Hernandez v. Johnston, 833 F.2d 1316, 1319 (9th Cir. 1987). As a result, the complaint will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **granted**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel is **DENIED** as moot.

An appropriate order of dismissal shall accompany this Memorandum and Order.

Dated this 2nd day of November, 2007.


UNITED STATES DISTRICT JUDGE